**THE HON'BLE MR JUSTICE J.CHELAMESWAR**

**And**

**THE HON'BLE MR JUSTICE P. LAKSHMANA REDDY**

**WRIT APPEAL No : 1800 of 2004**

**ORDER**:- **(PER THE HONOURABLE JC,J)**

Aggrieved by the order, dated 17.11.2004, in W.P.No.2108 of 2004, the un-successful petitioner therein preferred the present appeal.

The matter was admitted on 19.11.2004 and interim order to continue the petitioner in service pending further orders was granted on that day. Hence, the WVMP.No.2804 of 2005.

When the matter is taken up, both the learned counsel for the petitioner and the respondent agreed that the matter could be disposed of finally at this stage.

The appellant joined as Office Assistant in the service of the 5th respondent sometime in the year 1981 and now working as Section Supervisor to which post he was promoted during the course of his service. It appears, that at the time of the employment, the petitioner submitted a social status certificate, dated 22.10.1977, which indicated that he belongs to Scheduled Tribe. After the petitioner entered into service, it appears, some employees association made a representation to the respondents that the petitioner does not, in fact, belongs to Scheduled Tribe, and therefore, the Certificate, dated 22.10.1977, is required to be cancelled. The 1st respondent herein in exercise of the powers under The Andhra Pradesh (SC, ST & BCs) Regulation of Issue of Community Certificates Act, 1993 (for short “the Act”), passed an order, dated 31.10.2004, canceling the certificate issued in favour of the petitioner.

A statutory appeal under Section 7 of the said Act is available to the petitioner. However, without availing the said statutory appeal, the petitioner approached this Court straightaway by way of the abovementioned Writ Petition. A learned Judge of this Court was pleased to dismiss the writ petition on the ground of availability of a statutory appeal an effective alternative remedy and hence, the present writ appeal.

Section 7(2) of the said Act provides for an appeal against any order passed under Section 5 of the Act by the Collector and it reads as follows:

> "Any person aggrieved by an order passed under Section 5, by the District Collector may, within thirty days from the date of application of such order in the Andhra Pradesh Gazette, appeal to the Government and the Government may, after giving the appellant an opportunity of being heard and subject to such rules as may be prescribed, confirm or set aside the order appealed against."

It can be seen from the above extract that under the sub-section that an appeal lies within thirty days from the date of the publication of an order passed under Section 5 of the Act and the period of thirty days is to be reckoned from the date of notification of the passing of the order. The expression "notification" is defined under Section 2(g); to mean that a notification published in Andhra Pradesh Gazette. The order of the Collector canceling the said social status certificate is dated 31.10.2004.

The present writ appeal was filed on 19.11.2004. It is brought to our notice, today at the time of hearing that the order cancelling the certificate of the petitioner was in fact published in the Gazette on 10.11.2004 i.e., a few days before the date of filing the writ petition. In fact, a copy of the Chittoor District Gazette, dated 10.11.2004, is placed by the respondents on file.

The learned counsel for the petitioner submitted that the petitioner had no knowledge of such Gazette publication by the date of filing of the writ appeal.

Pursuant to the decision of the Collector, canceling the caste certificate issued in favour of the petitioner, apprehending action would be initiated against the petitioner by the 5th respondent-employer, the petitioner filed the writ petition. As apprehended by the petitioner, the 1st respondent-Collector, communicated the factum of the cancellation of the certificate by his letter, dated 24.11.2004, to the 5th respondent to take necessary action.

Having regard to the availability of the statutory appeal, we do not see any reason to interfere with the judgment under appeal and accordingly, the writ appeal is disposed of at this stage directing the petitioner to avail the statutory appeal under Section 7(2) of the Act, within a period of thirty days from today.

We further direct the 5th respondent to continue the petitioner in service pending final decision in the appeal proposed to be preferred by the petitioner. No costs.

In view of the above directions, we also deem it just and necessary if the appeal is preferred by the petitioner as directed above, the same shall be decided by the appellate authority, within a period of ninety days from the date of receipt of the appeal. In the event, the petitioner does not prefer the appeal within the period of thirty days as directed above, it is open for the 5th respondent to take such appropriate action in accordance with law, if he so advised.

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**J.CHELAMESWAR, J**

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**P. LAKSHMANA REDDY, J**

Date: 26.12.2005

ES/STP